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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,527	10/25/2001	Irvin H Stumler	1283/35	1862
20350	7590	08/25/2004	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP			CARTAGENA, MELVIN A	
TWO EMBARCADERO CENTER			ART UNIT	
EIGHTH FLOOR			PAPER NUMBER	
SAN FRANCISCO, CA 94111-3834			3754	

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/868,527

Applicant(s)

STUMLER ET AL.

Examiner

Melvin A. Cartagena

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 12 and 13 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

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DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-11 and 14-18, drawn to an automatic dispenser.

Group II, claim(s) 12 and 13, drawn to an outlet valve.

2. The inventions listed as Groups II and I do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the broad dispensing valve in fluid communication with the dispensing chamber does not define over the prior art.

3. During a telephone conversation with Kevin Lamaund on August 10, 2004 a provisional election was made without traverse to prosecute the invention of I, claims 1-11 and 14-18.

Affirmation of this election must be made by applicant in replying to this Office action. Claims are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

5. Claim 1 is objected to because of the following informalities: the term “manual” in line 7, is misleading as the specifications indicate the plunger to move by fluid pressure, the term should be deleted. Appropriate correction is required.
6. Claim 16 is objected to because of the following informalities: in page 21, line 4, the word “man” should be changed to --main-- and the in page 21, line 12, the period between “end” and “;” should be deleted. Appropriate correction is required.
7. Claim 15 is objected to because of the following informalities: the claim recites the limitation "said platform" in line 2. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 102

8. Claims 1-4, 6, 7, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,494,194 to Topper et al.

Topper shows a viscous material dispenser as seen in Figs. 1-4, a main dispenser chamber 240, a portioning chamber 86 in fluid communication with the main dispensing chamber, an outlet valve 84 in fluid communication with the portioning chamber, a storage chamber 36 with a door 28, a control system mounted on the door as described in column 4, lines 12-22, and a door opening 34.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 5, 8, 9, 10, 11, 16, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,494,194 to Topper et al. in view of US 6,325,250 to Feola.

Topper shows all claimed features as discussed above except for fluid operated dispenser actuators. Feola shows a dispensing machine with a pneumatic dispenser operators 30 with a pressurized gas reservoir 12. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Topper to include pneumatic dispenser operators as taught by Feola to convert a manual dispenser into an automatic dispensing to better control the extrusion cycle time and produce consistent extrusions.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Torterotot shows a doser-dispenser for pasty product. Hudcovic shows a device for dosing product in past form. Alpes shows a method for dispensing frozen dessert.

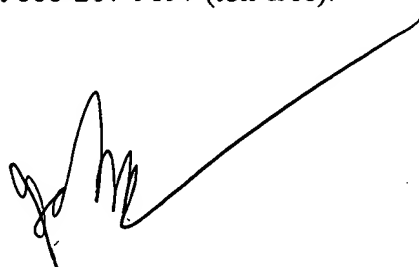
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (703) 308-5810. The examiner can normally be reached on M-F (7:30AM to 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Louis G. Mancene can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MAC 8/20/04
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A handwritten signature in black ink, appearing to read 'Gene Mancena', with a long, sweeping horizontal line extending to the right.

Gene Mancena
Supervisory Patent Examiner
Group 3700